

REMARKS

Reconsideration of the above-identified patent application in view of the amendment above and the remarks below is respectfully requested.

Claim 34 has been canceled in this paper. Claims 1, 4, 10, 12, 22, 23, 26, 32, 35 and 41 have been amended in this paper. No new claims have been added in this paper. Therefore, claims 1-33 and 35-44 are pending and are under active consideration.

Claims 14-18, 36-40 and 44 have been allowed.

Claims 1-3, 8-12, 19-25, 30-34 and 41-43 stand rejected under 35 U.S.C. 102(b) "as being anticipated by Rogers et al (US 6416496)." In support of the rejection, the Patent Office states the following:

Rogers discloses a delivery apparatus comprising a tube (tube exit), a device for monitoring the administration of fluids, a casing 150, an electronic circuit mounted within the casing, and a metering device (col. 13-14). Rogers does not disclose that the device is specifically for the administration of enteral nutrition. Since the instant claim is drawn to an apparatus and not a method, the limitation regarding the use of the device with a feeding tube is interpreted to be an intended use recitation. The device of Rogers may be used to infuse any fluid into a patient. The device includes a timer (Col. 14, lines 38-40). The casing comprises a lower housing and an upper housing pivotally connected by a hinge (col. 13, lines 22-23). The device includes an externally visible display 178 with an input 194 (Col. 14, lines 5-10).

Insofar as the subject rejection relates to claim 34, the rejection is moot in view of Applicant's cancellation herein of claim 34. Insofar as the subject rejection relates to claims 1-3, 8-12, 19-25, 30-33 and 41-43, Applicant respectfully traverses the subject rejection.

Claim 1, from which claims 2-3, 8-9 and 19-22 depend, has been amended herein and now recites "[t]he combination of:

(a) an enteral feeding tube, said enteral feeding tube including a longitudinally-extending bore and an open proximal end, and

(b) a device for monitoring the administration of enteral nutritional fluids into the open proximal end of said enteral feeding tube, said device comprising,

(i) a casing coupled to the open proximal end of said enteral feeding tube, said casing being shaped to define a lumen in fluid communication with the longitudinally-extending bore of said enteral feeding tube, said lumen including an inlet and an outlet, and

(ii) an electronic control circuit mounted within said casing.”

Claim 1 is neither anticipated by nor rendered obvious over Rogers et al. for at least the reason that Rogers et al. does not teach or suggest, amongst other things, the combination of an **enteral** feeding tube and a device for monitoring the administration of **enteral** nutritional fluids into said **enteral** feeding tube. Instead, Rogers et al. is limited to an automated system for administering a variety of **intravenous** drug regimens through an **IV** tube. There is no teaching or suggestion in Rogers et al. of an **enteral** feeding tube nor is there any teaching or suggestion in Rogers et al. of the suitability of its automated system for uses other than **intravenous** infusion.

Claim 10, from which claims 11-12 depend, and claim 41, from which claims 42-43 depend, are patentable over Rogers et al. for at least the same types of reasons discussed above in connection with claim 1.

Claim 23, from which claims 24 and 25 depend, has been amended herein and now recites “[a] device for monitoring the administration of enteral nutritional fluids into the open proximal end of a feeding tube, said feeding tube including a longitudinally-extending bore and an open proximal end, said device comprising:

(i) a casing shaped to comprise an upper housing and a lower housing, said lower housing being shaped to comprise a top surface, a bottom surface and a lumen, said lumen extending transversely relative to said top and bottom surfaces and including an inlet and an outlet, said inlet being provided in said top surface, said casing being adapted to be coupled to the open proximal end of said feeding tube such that the lumen is in fluid communication with the longitudinally-extending bore, and

(ii) an electronic control circuit mounted within said casing.”

Claim 23 is neither anticipated by nor rendered obvious over Rogers et al. for at least the reason that Rogers et al. does not teach or suggest a monitoring device comprising, amongst other things, a casing shaped to comprise an upper housing and a lower housing, the lower housing being shaped to comprise a top surface, a bottom surface and a lumen, the lumen extending transversely relative to the top and bottom surfaces and including an inlet and an outlet, the inlet being provided in the top surface. Instead, Rogers et al. is directed at an infusion pump for expelling the contents of a fluid IV bag in a controlled manner. The Patent Office is apparently taking the position that the “tube exit” in Fig. 17A of Rogers et al. corresponds to the claimed lumen. However, Applicant notes that claim 23 requires, amongst other things, that the lumen extend transversely relative to the top and bottom surfaces of the lower housing of the casing and that the inlet of the lumen be provided in the top surface of the lower housing of the casing. These features are not present in the “tube exit” of Rogers et al. nor are they suggested by Rogers et al.

Claim 32, from which claim 33 depends, has been amended herein and now recites “[a] device for monitoring the administration of enteral nutritional fluids into the open proximal end of

a feeding tube, said feeding tube including a longitudinally-extending bore and an open proximal end, said device comprising:

(i) a casing comprising a lower housing and an upper housing which are pivotally connected together about a hinge, said lower housing being shaped to include a top surface, a bottom surface, and a tube connector, said tube connector being adapted to be fluidly coupled to the open proximal end of said feeding tube, said tube connector extending transversely through said top surface and said bottom surface of said lower housing; and

(ii) an electronic control circuit mounted within said casing.”

Claim 32 is neither anticipated by nor rendered obvious over Rogers et al. for at least the reason that Rogers et al. does not teach or suggest a monitoring device comprising, amongst other things, a casing comprising a lower housing and an upper housing which are pivotally connected together about a hinge, the lower housing being shaped to include a top surface, a bottom surface, and a tube connector, the tube connector extending transversely through the top surface and the bottom surface of the lower housing. The Patent Office is apparently taking the position that the “tube exit” in Fig. 17A of Rogers et al. corresponds to the claimed tube connector. However, Applicant notes that claim 32 requires, amongst other things, that the tube connector extend transversely through the top and bottom surfaces of the lower housing. This feature is not present in the “tube exit” of Rogers et al. nor is it suggested by Rogers et al.

Accordingly, for at least the above reasons, the subject rejection should be withdrawn.

Claims 13 and 35 stand rejected under 35 U.S.C. 103(a) “as being unpatentable over Rogers.” In support of the rejection, the Patent Office states the following:

Claims 13, 35 differ from Rogers in calling for the tube connector to be an outwardly projecting barb. Rogers is silent as to

the tube connector. However, it is well known in the art to use a barbed connector to connect a tube to an upstream device because it is secure and releasable. Therefore, it would have been obvious to one of ordinary skill in the art at the time of invention to modify the device of Rogers to include a barbed tube connector.

Applicant respectfully traverses the subject rejection. Claims 13 and 35 depend ultimately from claims 10 and 32, respectively. Claims 10 and 32 are patentable over Rogers et al. for at least the reasons given above. Therefore, based at least on their respective dependencies, claims 13 and 35 are patentable over Rogers et al.

Accordingly, for at least the above reasons, the subject rejection should be withdrawn.

Claims 4-7 and 26-29 stand objected to “as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.”

Without acquiescing in the propriety of the objection, Applicant has rewritten claims 4 and 26 in independent form, claims 5-7 depending from claim 4 and claims 27-29 depending from claim 26. Therefore, for at least the above reason, the subject objection should be withdrawn.

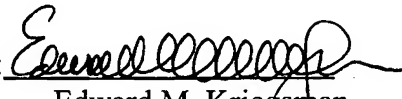
In conclusion, it is respectfully submitted that the present application is now in condition for allowance. Prompt and favorable action is earnestly solicited.

If there are any fees due in connection with the filing of this paper that are not accounted for, the Examiner is authorized to charge the fees to our Deposit Account No. 11-1755. If a fee is

required for an extension of time under 37 C.F.R. 1.136 that is not accounted for already, such an extension of time is requested and the fee should also be charged to our Deposit Account.

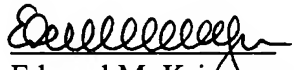
Respectfully submitted,

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I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Mail Stop Amendment, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on March 2, 2009.


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